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Director's Office
Group 3700

Erwin Schwartz
305 Baffin, Dollard-Des-Ormeaux
Quebec, H9A3GA4, Canada

In re Application of
Erwin Schwartz et al.
Serial No. 08/418,286
Filed: April 7, 1995
For: HEAT EXCHANGER

:
:
: DECISION ON PETITION
: TO WITHDRAW HOLDING
: OF ABANDONMENT
:

Receipt is acknowledged of Applicants' Petition to withdraw the holding of abandonment filed March 17, 2003 (and entered as Paper No. 15).

BACKGROUND

On February 27, 1996, a Final Rejection was mailed to Petitioners (Paper no. 7).

On May 5, 1996, Petitioners filed a request for reconsideration after final rejection (Paper no. 8).

On May 10, 1996, Petitioners filed a Revocation of Power of Attorney to remove Mila Shvartsman as their representative and establishing Erwin Schwartz as having the Power of Attorney (Paper no. 9).

On May 30, 1996, a Notice of Acceptance of the Revocation of Power of Attorney was mailed to Petitioners (Paper no. 10).

On June 3, 1996, an Advisory Action was mailed to Petitioners (Paper no. 11).

On July 22, 1996, Petitioners filed a proposed amendment after Final under 37 CFR 1.116.

On September 11, 1996, a notice of informal/non-responsive amendment was mailed to Petitioners indicating that the proposed amendment filed 7/22/96 lacked a petition for an extension of time and the proper petition fee.

On October 1, 1996, a Notice of Abandonment was mailed to Petitioners in view of the fact that no proper response to the Final Rejection had been received.

DISCUSSION

Petitioners have petitioned to withdraw the holding of abandonment which does not require a petition fee.

The facts show that a request for reconsideration after Final Rejection was filed on 5/10/96. In the petition, Petitioners have misstated the Advisory Action as having "EXTENDED the Period for Response by ... THREE MONTH...". In the Advisory Action dated 6/3/96, the examiner actually stated that

"(t)he period for response continues to run three months from the date of the final rejection" and that the "...request for reconsideration has been considered but does not overcome the rejection...".

The facts further show that a proposed amendment after final rejection was submitted on 7/22/96 without a petition for an extension of time along with the fee since the three month shortened statutory period set in the final rejection had expired on 5/27/96. Thus the proposed amendment was not timely filed. In response to the late amendment, the examiner mailed a notice of informal/non-responsive amendment giving Petitioners one month to correct the informality which as he noted would be an "appropriate extension of time and fee therefore".

The facts show, and there is no dispute, that Petitioners failed to file a response to the examiner's notice of informal/non-responsive amendment mailed 9/11/96. Thus, in view of the above discussion and the fact that the full statutory limit of six months has run from the time of the final rejection, the application is, in fact, abandoned. This situation is not an issue involving a holding of abandonment but rather an abandonment in fact.

Petitioners have several options when a case is abandoned. In order to revive an application that is abandoned, Petitioners must file a petition under 37 CFR 1.137 as set forth below. See also MPEP, Section 711.03(c).

Petitions under 37 CFR 1.137(a) require:

- (A) the required reply, unless previously filed;
- (B) the petition fee as set forth in 37 CFR 1.17(l);
- (C) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and
- (D) any terminal disclaimer required pursuant to 37 CFR 1.137(d).

Petitions under Rule 137(b) require:

- (A) the required reply, unless previously filed;
- (B) the petition fee as set forth in Rule 1.17(m);

(C) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to Rule 1.137(b) was unintentional; and

(D) any terminal disclaimer required pursuant to Rule 1.137(d).

DECISION

The petition is DISMISSED.

Petitioners may file a renewed petition, without fee, addressing the points raised above. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Alternatively, petitioners may wish to consider filing a petition to revive under 37 CFR 1.137 as set forth above. The rules and MPEP sections cited may be found on the USPTO website at: www.uspto.gov.



Richard A. Bertsch
Group Director
Technology Center 3700
Phone: 703-308-0975
Fax: 703-308-4741

Attachment : copy of MPEP, Section 711.03(c).